

Appeal from decision of Wyoming State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. W MC 118425 through W MC 118474, and W MC 118484 through W MC 118523.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim-- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim must file a notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim on or before Dec. 30 of each calendar year. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or

excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Evidence: Presumptions--Evidence: Sufficiency

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their duties.

APPEARANCES: Eugene W. Walck, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Eugene W. Walck, Jr., appeals the Wyoming State Office Bureau of Land Management (BLM), decision of November 17, 1982, which declared the unpatented Rich Nos. 1 and 2, Annie B. Nos. 8 through 11, Annie B. Nos. 44 through 47, Roy Nos. 1 through 40, and Roy Nos. 50 through 89 lode mining claims, W MC 118425 through W MC 118474, and W MC 118484 through W MC 118523, abandoned and void because no proof of labor or notice of intention to hold the claims for 1981 was filed with BLM prior to December 31, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

Appellant alleges he mailed the required proofs of labor for these claims in December 1981, after recording them in Niobrara County, Wyoming. He asserts that he has not abandoned these claims, and states that he has performed the required assessment work each year. His request to the Postal Service to have a tracer put on his envelope containing the proofs of labor produced negative results.

[1] It is well established that failure of the owner of an unpatented mining claim to submit evidence of assessment work or a notice of intention to hold the claim, both in the county where the location notice is recorded and to the proper office of BLM, prior to December 31 of each year, shall be deemed conclusively to constitute an abandonment of the claim. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a).

[2] As the Board stated in Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981):

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont., June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or

decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

\* \* \* Appellant also argues that the intention not to abandon these claims was apparent \* \* \*. At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrel v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property, §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [Emphasis in original.]

53 IBLA at 196-97; 88 I.D. at 371-72.

Despite appellant's statement that the documents were properly and timely mailed, the regulations define "file" to mean "being received and date-stamped by the proper BLM office," 43 CFR 3833.1-2(a). Thus, even if the documents had been mailed and an error by the Postal Service prevented them from reaching the BLM office, that fact would not excuse appellant's failure to comply with the cited regulations. Magma Power Co., 68 IBLA 201 (1982); Edna L. Patterson, 64 IBLA 316 (1982); Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979). This Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his mailing to the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f).

[3] A legal presumption of regularity attends the official acts of public officers, and in the absence of clear evidence to the contrary, courts presume they have properly discharged their official duties. United States v. Chemical Foundation, 272 U.S. 1, 14 (1926); Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Kephart v. Richardson, 505 F.2d 1085 (3d Cir. 1974); Lawrence E. Dye, 57 IBLA 360 (1981). Rebuttal of such a presumption requires the presentation of substantial countervailing evidence. Stone v. Stone, 136 F.2d 761 (D.C. Cir. 1943); H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981).

As BLM has reported it made a thorough check and could find no evidence of the receipt of the proofs of labor for the subject claims, it was proper for BLM to declare the claims abandoned for failure to comply with the requirements of FLPMA.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Will A. Irwin  
Administrative Judge

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R. W. Mullen  
Administrative Judge.

